

NOV 23 2004

EMPLOYER STATUS DECISION

Cleveland Commercial Railroad Company, LLC

This is the determination of the Railroad Retirement Board concerning the status of Cleveland Commercial Railroad Company, LLC (CCRC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.) (RUIA). CCRC has not heretofore been ruled to be an employer under the RRA and RUIA.

Jami Bishop, attorney for CCRC, advised that CCRC began actual operations on July 9, 2004 and that its three employees were first compensated on August 21, 2004. Pursuant to a lease and operating agreement between CCRC and Wheeling & Lake Erie Railway Company (W&LE) (B.A. No. 3373), CCRC conducts line haul and switching operations over 10.4 miles of rail line owned by W & LE in Cuyahoga County, Ohio, extending from milepost 15.5 at Glenview to milepost 5.1 at Cleveland. That line was previously operated by Connotton Valley Railway, Inc. (B.A. No. 2283). Surface Transportation Board (STB) authority for CCRC operations is set forth at STB Finance Docket No. 34521, decided July 30, 2004.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of Title 49 [45 U.S.C. § 231(a)(1)(i)].

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Based on the information summarized above, it is determined that Cleveland Commercial Railroad Company, LLC, became an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act on July 9, 2004, the date on which actual operations began.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever